

AMENDED IN SENATE JULY 9, 2013
AMENDED IN SENATE JUNE 12, 2013
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AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1255

**Introduced by Assembly Member Pan
(Coauthors: Assembly Members Bloom and Chesbro)**

February 22, 2013

An act to amend Sections 12313, 12330, 12331, 12420, 12422, 12446, 12502, and 12503 of, and to add Sections 12245.2 and 12246.2 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1255, as amended, Pan. Corporations: consumer cooperatives.

Existing law, the Consumer Cooperative Corporation Law, governs the organization and operation of consumer cooperative corporations. The law specifies the provisions that may be set forth in the articles of incorporation of a consumer cooperative.

This bill would include among these provisions authorization for the board of directors to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships authorized in the bylaws or articles and, if the bylaws or articles authorize a class of memberships to be divisible into a series, to any wholly unissued series of a membership class authorized to be divisible into a series, and to fix the number of memberships in the series and the designation of the series, as specified. The bill would require any

amendment to the bylaws or articles of a consumer cooperative to be approved by the members of a series if the series would be adversely affected by the action, as specified. The bill would also make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12245.2 is added to the Corporations
2 Code, to read:
3 12245.2. “Preferred memberships” means memberships that
4 have a preference over any other memberships with respect to
5 distribution of assets on liquidation or with respect to payment of
6 distributions.
7 SEC. 2. Section 12246.2 is added to the Corporations Code,
8 to read:
9 12246.2. “Series” of memberships means memberships within
10 a class of memberships that have the same rights, privileges,
11 preferences, restrictions, and conditions, but that differ in one or
12 more rights, privileges, preferences, restrictions, or conditions
13 from other memberships within the class. Certificated securities
14 and uncertificated securities do not constitute a different series if
15 the only difference is certificated and uncertificated status.
16 SEC. 3. Section 12313 of the Corporations Code is amended
17 to read:
18 12313. (a) The articles of incorporation may set forth any or
19 all of the following provisions, which shall not be effective unless
20 expressly provided in the articles:
21 (1) A provision limiting the duration of the corporation’s
22 existence to a specified date.
23 (2) A provision providing for the distribution of the remaining
24 assets of the corporation, after payment or adequate provision for
25 all of its debts and liabilities, to a charitable trust.
26 (b) Nothing contained in subdivision (a) shall affect the
27 enforceability, as between the parties thereto, of any lawful
28 agreement not otherwise contrary to public policy.
29 (c) The articles of incorporation may set forth any or all of the
30 following provisions:

1 (1) The names and addresses of the persons appointed to act as
2 initial directors.

3 (2) Provisions concerning the transfer of memberships, in
4 accordance with Section 12410.

5 (3) The classes of members, if any, and if there are two or more
6 classes, the rights, privileges, preferences, restrictions, and
7 conditions attaching to each class.

8 (4) Any other provision, not in conflict with law, for the
9 management of the activities and for the conduct of the affairs of
10 the corporation, including any provision which is required or
11 permitted by this part to be stated in the bylaws.

12 (5) A provision conferring upon members the right to determine
13 the consideration for which memberships shall be issued.

14 (6) A provision authorizing the board of directors, within any
15 limits or restrictions stated, to fix the rights, privileges, preferences,
16 restrictions, and conditions attaching to any wholly unissued class
17 of memberships authorized in the bylaws or the articles.

18 (7) If the bylaws or articles authorize a class of memberships
19 to be divisible into a series, a provision authorizing the board of
20 directors, within any limits or restrictions stated, to fix the rights,
21 privileges, preferences, restrictions, and conditions attaching to
22 any wholly unissued series of a membership class authorized to
23 be divisible into a series, and to fix the number of memberships
24 in the series and the designation of the series. As to any series, the
25 number of which is authorized to be fixed by the board, the articles
26 may also authorize the board to increase or decrease, *but not below*
27 *the number of memberships then outstanding*, the number of
28 memberships of any *such* series ~~of this type~~ subsequent to the
29 issuance of that series, ~~but not below the number of memberships~~
30 ~~then outstanding~~ series. Unless the articles or bylaws provide
31 otherwise, in case the number of memberships of any series is
32 decreased, the memberships constituting this decrease shall resume
33 the status which they had prior to the adoption of the board
34 resolution originally fixing the number of memberships of ~~this~~ *the*
35 series.

36 SEC. 4. Section 12330 of the Corporations Code is amended
37 to read:

38 12330. (a) Except as provided in subdivision (c) and Sections
39 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted,

1 amended, or repealed by the board unless the action would do any
2 of the following:

3 (1) Materially and adversely affect the rights or obligations of
4 members as to voting, dissolution, redemption, transfer,
5 distributions, patronage distributions, patronage, property rights,
6 or rights to repayment of contributed capital.

7 (2) Increase or decrease the number or members authorized in
8 total or for any class.

9 (3) Effect an exchange, reclassification or cancellation of all or
10 part of the memberships.

11 (4) Authorize a new class of membership.

12 (b) Bylaws may be adopted, amended or repealed by approval
13 of the members (Section 12224); provided, however, that adoption,
14 amendment, or repeal also requires approval by the members of a
15 class or series if that action would do any of the following:

16 (1) Materially and adversely affect the rights or obligations of
17 that class or series as to voting, dissolution, redemption, transfer,
18 distributions, patronage distributions, patronage, property rights,
19 or rights to repayment of contributed capital, in a manner different
20 than such action affects another class or another series within the
21 same class.

22 (2) Materially and adversely affect such class or series as to
23 voting, dissolution, redemption, transfer, distributions, patronage
24 distributions, patronage, property rights, or rights to repayment of
25 contributed capital, by changing the rights, privileges, preferences,
26 restrictions or conditions of another class or another series within
27 the same class.

28 (3) Increase or decrease the number of memberships authorized
29 for the class.

30 (4) Increase the number of memberships authorized for another
31 class.

32 (5) Effect an exchange, reclassification or cancellation of all or
33 part of the memberships of the class or series.

34 (6) Authorize a new class of memberships.

35 (c) The articles or bylaws may restrict or eliminate the power
36 of the board to adopt, amend or repeal any or all bylaws, subject
37 to subdivision (e) of Section 12331.

38 (d) Bylaws may also provide that repeal or amendment of those
39 bylaws, or the repeal or amendment of specified portions of those
40 bylaws, may occur only with the approval in writing of a specified

1 person or persons other than the board or members. However, this
2 approval requirement, unless the articles or the bylaws specify
3 otherwise, shall not apply if any of the following circumstances
4 exist:

5 (1) The specified person or persons have died or ceased to exist.

6 (2) If the right of the specified person or persons to approve is
7 in the capacity of an officer, trustee, or other status and the office,
8 trust, or status has ceased to exist.

9 (3) If the corporation has a specific proposal for amendment or
10 repeal, and the corporation has provided written notice of that
11 proposal, including a copy of the proposal, to the specified person
12 or persons at the most recent address for each of them, based on
13 the corporation's records, and the corporation has not received
14 written approval or nonapproval within the period specified in the
15 notice, which shall not be less than 10 nor more than 30 days
16 commencing at least 20 days after the notice has been provided.

17 SEC. 5. Section 12331 of the Corporations Code is amended
18 to read:

19 12331. (a) The bylaws shall set forth (unless such provision
20 is contained in the articles, in which case it may only be changed
21 by an amendment of the articles) the number of directors of the
22 corporation, or the method of determining the number of directors
23 of the corporation, or that the number of directors shall be not less
24 than a stated minimum or more than a stated maximum with the
25 exact number of directors to be fixed, within the limits specified,
26 by approval of the board or the members (Sections 12222 and
27 12224), in the manner provided in the bylaws, subject to
28 subdivision (e). The number or minimum number of directors shall
29 not be less than three. Alternate directors may be permitted, in
30 which event, the bylaws shall specify the manner and times of
31 their election and the conditions to their service in place of a
32 director.

33 (b) Once members have been admitted, a bylaw specifying or
34 changing a fixed number of directors or the maximum or minimum
35 number or changing from a fixed to a variable board or vice versa
36 may only be adopted by approval of the members.

37 (c) The bylaws may contain any provision, not in conflict with
38 law or the articles, for the management of the activities and for
39 the conduct of the affairs of the corporation, including but not
40 limited to:

1 (1) Any provision referred to in subdivision (c) of Section
2 12313.

3 (2) The time, place and manner of calling, conducting and giving
4 notice of members', directors', and committee meetings, or of
5 conducting mail ballots.

6 (3) The qualifications, duties and compensation of directors;
7 the time of their election; and the requirements of a quorum for
8 directors' and committee meetings.

9 (4) The appointment of committees, composed of directors or
10 nondirectors or both, by the board or any officer and the authority
11 of these committees.

12 (5) The appointment, duties, compensation and tenure of
13 officers.

14 (6) The mode of determination of members of record.

15 (7) The making of reports and financial statements to members.

16 (8) Setting, imposing and collecting dues, assessments, and
17 membership and transfer fees.

18 (9) The time and manner of patronage distributions consistent
19 with this part.

20 (d) The bylaws may provide for eligibility, the manner of
21 admission, withdrawal, suspension, and expulsion of members,
22 and the suspension or termination of memberships consistent with
23 the requirements of Section 12431.

24 (e) The bylaws may require, for any or all corporate actions,
25 the vote of a larger proportion of, or all of, the members or the
26 members of any class, unit, or grouping of members or the vote
27 of a larger proportion of, or all of, the directors, than is otherwise
28 required by this part. A provision in the bylaws requiring a greater
29 vote shall not be altered, amended or repealed except by the greater
30 vote, unless otherwise provided in the bylaws.

31 (f) The bylaws may contain a provision limiting the number of
32 members, in total or of any class or series, which the corporation
33 is authorized to admit.

34 (g) The bylaws may provide for the establishment by the
35 corporation of a program for the education of its members, officers,
36 employees and the general public in the principles and techniques
37 of cooperation.

38 SEC. 6. Section 12420 of the Corporations Code is amended
39 to read:

1 12420. A corporation may issue memberships having different
2 rights, privileges, preferences, restrictions, or conditions, as
3 provided in its articles or bylaws. If the articles or bylaws authorize
4 at least one class of voting memberships, a corporation may also
5 authorize and issue additional classes of memberships, preferred
6 or otherwise, that are divisible into a series or are nonvoting or
7 both.

8 SEC. 7. Section 12422 of the Corporations Code is amended
9 to read:

10 12422. (a) Unless the corporation's articles or bylaws so
11 provide, memberships are not redeemable. A corporation may
12 provide in its articles or bylaws for one or more classes or series
13 of memberships which are redeemable, in whole or in part, for
14 such consideration within such time or upon the happening of one
15 or more specified events and upon the terms and conditions stated
16 in the articles or bylaws. However, no membership shall actually
17 be redeemed if prohibited by Chapter 4 (commencing with Section
18 12450).

19 (b) Nothing in this section shall prevent a corporation from
20 creating a sinking fund or similar provision for, or entering into
21 an agreement for, the redemption or purchase of its memberships
22 to the extent permitted by Chapter 4 (commencing with Section
23 12450).

24 SEC. 8. Section 12446 of the Corporations Code is amended
25 to read:

26 12446. (a) Subject to subdivision (b), Chapter 7 (commencing
27 with Section 1500) of Title 10 of Part 3 of the Code of Civil
28 Procedure shall not apply to any proprietary interest in a consumer
29 cooperative corporation. Any proprietary interest that would
30 otherwise escheat to the state pursuant to Chapter 7 (commencing
31 with Section 1500) of Title 10 of Part 3 of the Code of Civil
32 Procedure shall instead become the property of the corporation.

33 (b) Notwithstanding subdivision (a), no proprietary interest shall
34 become the property of the corporation under this section unless
35 the following requirements are satisfied:

36 (1) The articles or bylaws shall specifically provide for the
37 transfer of ownership of the otherwise escheated proprietary
38 interests to the corporation.

39 (2) At least 60 days prior notice of the proposed transfer of the
40 proprietary interest to the corporation is given to the affected

1 member by first-class or second-class mail to the last address of
2 the member shown on the corporation's records, and by publication
3 in a newspaper of general circulation in the county in which the
4 corporation has its principal office. Notice given in the foregoing
5 manner shall be deemed actual notice.

6 (3) No proprietary interest shall become the property of the
7 corporation under this section if written notice objecting thereto
8 is received by the corporation from the affected member prior to
9 the date of the proposed transfer.

10 (c) For purposes of this section, a "proprietary interest" shall
11 mean and include any membership, membership certificate,
12 membership share, or share certificate of any class or series
13 representing a proprietary interest in, and issued by, the corporation
14 together with all accrued and unpaid dividends and patronage
15 distributions relating thereto.

16 SEC. 9. Section 12502 of the Corporations Code is amended
17 to read:

18 12502. (a) Except as provided in this section or Section 12503,
19 amendments may be adopted if approved by the board and
20 approved by the members before or after the approval by the board.

21 (b) Notwithstanding subdivision (a), the following amendments
22 may be adopted by approval of the board alone:

23 (1) An amendment extending the corporate existence or making
24 the corporate existence perpetual, if the corporation was organized
25 prior to August 14, 1929.

26 (2) An amendment deleting the initial street address and initial
27 mailing address of the corporation, the names and addresses of the
28 first directors, or the name and address of the initial agent.

29 (3) Any amendment, at a time the corporation has no members.

30 (4) Any amendment authorized in the articles pursuant to
31 subdivision (c) of Section 12313 fixing the rights, privileges,
32 preferences, restrictions, and conditions attaching to any wholly
33 unissued class of memberships.

34 (5) Any amendment authorized in the articles pursuant to
35 subdivision (c) of Section 12313 fixing the designation, number
36 of memberships and the rights, privileges, preferences, restrictions,
37 and conditions attaching to any wholly unissued series of
38 memberships, or an increase or decrease in the number of
39 memberships of any series.

1 (c) Whenever the articles require for corporate action the
2 approval of a particular class of members or of a larger proportion
3 of, or all of, the votes of any class, or of a larger proportion of, or
4 all of, the directors, than is otherwise required by this part, the
5 provision in the articles requiring a greater vote shall not be altered,
6 amended or repealed except by the class or the greater vote, unless
7 otherwise provided in the articles.

8 SEC. 10. Section 12503 of the Corporations Code is amended
9 to read:

10 12503. (a) An amendment shall also be approved by the
11 members (Section 12224) of a class, whether or not the class is
12 entitled to vote thereon by the provisions of the articles, if the
13 amendment would do any of the following:

14 (1) Materially and adversely affect the rights, privileges,
15 preferences, restrictions or conditions of that class as to voting,
16 dissolution, redemption or transfer, or the obligations of that class,
17 in a manner different than such action affects another class.

18 (2) Materially and adversely affect such class as to voting,
19 dissolution, redemption or transfer by changing the rights,
20 privileges, preferences, restrictions or conditions of another class.

21 (3) Increase the number of memberships authorized for the class.

22 (4) Increase the number of memberships authorized for another
23 class.

24 (5) Effect an exchange, reclassification or cancellation of all or
25 part of the memberships of the class.

26 (6) Authorize a new class of memberships.

27 (b) An amendment shall also be approved by the members of a
28 series whether or not the series is entitled to vote thereon by the
29 articles or bylaws if the series is adversely affected by the
30 amendment in a different manner than other shares of the same
31 class.